

# Adoption

Case Law

# Adult Adoption



Evelyn Hays v. Mavis Hays,  
946 So. 2d 867 (Ala. Civ. App. 2006).

- A stepparent cannot adopt a consenting adult stepchild under Ala. Code § 26-10A-6(2)(c) after the death of the spouse who was the stepchild's parent.
- The death of the spouse extinguishes the stepparent-stepchild relationship for the purposes of this statute.



**Consent**

J.L.P. v. L.A.M.,  
41 So.3d 770 (Ala. Civ. App. 2008).

### **HOLDING:**

- Adjudicated father of child born out of wedlock, who was child's “**presumed father**” under Adoption Code, **had to consent to child's adoption by mother's husband.**
- despite his failure to file notice on his own behalf with putative-father registry.

J.L.P. v. L.A.M.,

**Reasoning:**

- Adoption Code provided that consent of a “**presumed father**” of a child, i.e., any male person as defined in Uniform Parentage Act, was necessary in proceeding to adopt that child **if he had received adoptee into his home and openly held out adoptee as his own child.**
- Father had prosecuted paternity action to final judgment that declared him to be child's father.
- He had been awarded and had exercised visitation rights, and had paid child support to mother under paternity judgment.

## J.L.P. v. L.A.M.,

- **Adoption Code provided that necessity of consent of a “presumed father,” was not conditioned upon compliance with the Putative Father Registry Act.**
- (Per Curiam, with two Judges concurring and three Judges concurring in the result.) [Code 1975, §§ 26-10A-2\(11\), 26-10A-7\(a\)\(3\)\(d\); Code 1975, § 26-17-1 et seq. \(Repealed\).](#)

Ex parte F.P. and R.P.,  
857 So. 2d 125 (Ala. 2003).

**PROCEDURAL HISTORY**

- Father petitioned for a judicial determination that he was the biological father to child, father and paternal grandmother petitioned for custody of child, and adoptive parents petitioned for adoption of child and to terminate father's parental rights.
- The Juvenile Court entered judgment terminating father's parental rights, denied the joint petition for custody of the child, and approved adoption of child by adoptive parents.
- Father and paternal grandmother appealed. The Court of Civil Appeals, 857 So.2d 110, affirmed.
- Father and paternal grandmother petitioned for a writ of certiorari.



**HOLDING**

On overruling of rehearing, the Supreme Court held that:

- (1) evidence was insufficient to support finding that biological father gave implied consent to adoption of child or that father's actions amounted to an abandonment of child.**
- (2) statute establishing prebirth abandonment of child as a ground for termination of parental rights could not be applied retroactively to father.

Ex parte F.P. and R.P.,  
[CONTINUED]

➤ **FACTS**

- The father has never seen the child.
- He and the grandmother tried to see the baby shortly after it was born, but were told they could not see the child without the mother's permission.
- He testified that he did not provide support for the mother during her pregnancy because, he says, she did not ask for it.
- He also testified that he has not provided any support to the adoptive parents because they have not requested it.
- He made one attempt to contact the adoptive parents by telephone before the hearing in this case, but he reached a relative of the adoptive parents who was babysitting, the relative told him he could not see the child.
- The adoptive parents say they are not sure they want to have any contact with the father because he is contesting the adoption and they say they would consider requests from him to see the child to be “harassing calls.”

➤ **FACTS**

➤ **What Father Did**

- On **July 1, 1999**, the father petitioned the juvenile court for a determination of 'father and child relationship,' alleging that on or about June 29, 1999, 'the mother' had given birth to a child he believed might be his biological child [the record indicates that the child was born on July 6, 1999].
- he had registered with the putative-father registry, [§ 26–10C–1, Ala.Code](#) 1975.
- that he believed an adoption proceeding was pending in Probate Court.
- that he was requesting a blood test to determine paternity; and that he was requesting a stay of any pending adoption proceedings involving the minor child.

## ➤ **FACTS**

### ➤ **What Mother Did**

- On **July 12, 1999**, the adoptive parents petitioned the probate court for adoption, alleging that the child, born on July 6, 1999, was in the mother's custody and that 'no other persons or agencies have any interest' in the child; that 'all persons known to the [adoptive parents] at the time of filing this petition from whom consents or relinquishments to this adoption are required by law ... are as follows: [the mother]'; and that they were fit and proper persons to adopt the child.
- On July 13, 1999, the probate court entered an interlocutory judgment, awarding the adoptive parents custody of the child, ordering a postplacement investigation, and setting the case for a dispositional hearing in December 1999.

➤ **HOLDING**

- Finally, we address the contention that the father abandoned the child after its birth.
- Postbirth, the father had a justifiable excuse for failing to establish a relationship with the child—the adoptive parents did not wish to allow him to do so.

Ex parte J.W.B. and K.E.M.B.  
933 So.2d 1081 (Ala. Sup. Ct. 2005)

## **HOLDING:**

- Evidence was sufficient to support finding **that father failed to maintain a significant relationship with his child.**
- and thereby **impliedly consented to the child's adoption.**

## Ex parte J.W.B. and K.E.M.B.

### REASONING:

- Father was not excluded when birth mother was admitted to hospital.
- Maternal grandmother's request that father stay in waiting room was reasonable given mother's medical condition and father's apparent insensitivity by creating a party-like atmosphere in hospital room.
- **Father did not initiate legal proceedings until he was served with notice of adoption.**
- Father never went to birth mother's house in the three weeks following birth.
- **Mother's evasiveness** after father finally contacted her was due in part to father's alleged statement that he would get child legally or illegally and paternal grandmother's former conviction for interference with custody in an unrelated matter.

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K.P. and C.P. v. G.C. and J.C.,  
870 So. 2d 751 (Ala. Civ. App. 2003).

**PROCEDURAL FACTS:**

- Two sets of foster parents both filed petitions to adopt children.
- Following an *ores tenus* hearing, the Probate Court granted the adoption petition of the foster parents who first had care of the children.
- Department of Human Resources (DHR) and second set of foster parents appealed

K.P. and C.P. v. G.C. and J.C.,

**HOLDING:**

- Evidence was sufficient to establish that home of first set of foster parents was **MORE SUITABLE FOR THE CHILDREN.**

**REASONING:**

**SUFFICIENT EVIDENCE THAT FIRST SET OF FOSTER PARENTS WERE MORE SUITABLE  
BASED ON:**

- **Second set of foster parents** who wished to adopt children had **financial difficulties** and were already providing support to one of their children and three grandchildren.
- **First set of foster parents** only asked that children be removed from their home in frustration over the Department of Human Resources' (DHR) handling of attention deficit hyperactivity disorder (ADHD) of one of the children.

# HEARING



In re Adoption of F.I.T.,  
43 So. 3d 621 (Ala. Civ. App. 2010).

**PROCEDURAL FACTS:**

- Petitioners filed adoption petition to adopt child who was the sister of one of the petitioners, and a foreign national.
- Child's parents consented to the proposed adoption.
- The Probate Court dismissed the action WITH OUT A HEARING.

[In re Adoption of F.I.T.,](#)  
[43 So. 3d 621 \(Ala. Civ. App. 2010\).](#)

**HOLDING**

- Petitioners were entitled to a hearing on their uncontested adoption petition, despite trial court's concern that it might not have jurisdiction over the case in light of the fact that the child sought to be adopted was a foreign national; petitioners were entitled to opportunity to address the child's legal status.
  
- Petitioners were entitled to an evidentiary dispositional hearing on their uncontested adoption petition following court-ordered post-placement investigation into petitioners' suitability as adoptive parents, even though investigation generated a report indicating that one of the petitioners had previously abused a child; statute indicated that investigatory report could not be conclusive. [Code 1975, §§ 26-10A-19\(c\), 26-10A-25.](#)

## REASONING

### JURISDICTION:

- Unlike [Waite v. Waite, supra](#), there is no party opposing the petitioners in this action; the adoption petition in this case is uncontested.
- Therefore, there is no opposing party on behalf of whom the probate court could assert the affirmative defense of a lack of personal jurisdiction.
- **We are unwilling to hold that, under the facts of this case, the lack of an opposing party precludes the probate court's inquiry into personal jurisdiction.**
- However, in this case, the probate court failed to make such an inquiry; rather, it **entered a judgment denying the adoption petition based, in part, on its belief that it might lack jurisdiction.**

## REASONING

### CHILD ABUSE:

- Court ordered post placement investigation. [Section 26-10A-25, Ala.Code 1975](#), required the probate court to conduct a dispositional hearing on the adoption petition.
- **At that hearing, which the probate court scheduled but did not conduct**, the probate court would have considered a number of issues, including whether the petitioners are suitable adoptive parents, whether the adoption is in the child's best interests, and whether all requirements of the Adoption Code have been met. [§ 26-10A-25\(b\)\(5\)](#), [\(6\)](#), and [\(7\)](#), Ala.Code 1975.
- The report generated as a result of the post-placement investigation conducted pursuant to [§ 26-10A-19](#) indicating that R.M.T. had previously abused a child is relevant to those issues.
- [Section 26-10A-19\(i\), Ala.Code 1975](#), specifies that “[w]hen the [full post-placement] investigation has been conducted, ***the investigatory report shall not be conclusive but may be considered along with other evidence.***” (Emphasis added.)

- The probate court's failure to make a determination of its jurisdiction and to consider any “other evidence” in a dispositional hearing on the adoption petition was error.
- **BOTTOM LINE: MUST CONDUCT HEARING ON JURISDICTION AND HAVE DISPOSITIONAL HEARING.**





# Jurisdiction



R.L. v. J.E.R.,  
69 So. 3d 898 (Ala. Civ. App. 2011).

**PROCEDURAL FACTS:**

- Prospective adoptive parents filed petition to adopt child.
- Probate court sent case to juvenile court to determine whether to terminate mother's parental rights before adoption proceedings could continue.
- The Juvenile Court, entered judgment, ordering termination of mother's parental rights and ordering adoption.
- Mother appealed termination order

## R.L. v. J.E.R.,

### FINDINGS OF FACT.

- **Alabama was not child's “home state” under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), for purposes of making initial custody determination.**
- **Thus, juvenile court was without jurisdiction and judgment terminating** mother's parental rights, was void;
- Aside from child's temporary absence from Georgia while he was in perspective adoptive parents' custody, the child had lived with his mother in Georgia for six consecutive months immediately preceding filing of petition, mother continued to live in Georgia during child's temporary absence,
- No evidence that a Georgia court had declined to exercise jurisdiction over issue of child custody.
- [Code 1975, § 30–3B–201.](#)

## R.L. v. J.E.R.,

Ex parte C.L.C., 897 So.2d 234, 238 (Ala.2004), our supreme court held that, **generally, a juvenile court does not have jurisdiction to enter a judgment of adoption.**

The ‘primary jurisdiction over adoption proceedings is in the probate court.’ B.W.C. v. A.N.M., 590 So.2d 282, 283 (Ala.Civ.App.1991). ‘[U]nless [a] juvenile court acquire[s] jurisdiction over a petition to adopt by the “transfer” mechanism found in § 12–12–35, [Ala.] Code 1975,<sup>[[4]</sup> the juvenile court [is] without authority to grant an adoption.’ B.W.C., 590 So.2d at 283.

## R.L. v. J.E.R.,

“The probate court **kept exclusive jurisdiction over the issue of whether or not to grant or deny the petition to adopt.** Wesson, supra.

The probate court, pursuant to the authority of § 26–10A–3, sent the case to the juvenile court for the strictly **limited purpose of addressing the issue of termination** of parental rights, and the juvenile court acquired only that limited jurisdiction over this particular case.

R.L. v. J.E.R.,

- In this case, no party to the adoption proceeding filed a motion to transfer the case to the juvenile court; therefore, [§ 12–12–35, Ala.Code 1975](#), the statute creating the “transfer” mechanism referred to in the quote above, is not applicable here.
- Pursuant to the authority of [§ 26–10A–3](#), the probate court sent the case to the juvenile court **strictly for the limited purpose of addressing the issue of termination of parental rights, and the probate court retained jurisdiction over the adoption petition.**
- Therefore, on the authority of [C.L.C.](#), we conclude that the juvenile court did not have jurisdiction to enter the judgment of adoption.
- Accordingly, that judgment is also void, and the cause is remanded for the juvenile court to vacate the adoption judgment as well.

## R.L. v. J.E.R.,

**Note:** The **UCCJEA** does not ordinarily apply in **adoption proceedings**, but applied here because the adoption was connected with the separate custody matter of terminating the biological mother's parental rights.



Ex parte W.L.K.,  
175 So.3d 652 (Ala. Civil App. 2015).

### **PROCEDURE:**

- Prospective adoptive parents petitioned for adoption, and father filed contest.
- The Probate Court held hearing on father's contest, ruled that father had not impliedly consented to child's adoption,
- Denied father's subsequent motion to dismiss petition,
- Awarded temporary custody to prospective adoptive parents,
- Transferred case to juvenile court.
- Putative father petitioned for writ of mandamus.

## Ex parte W.L.K.

### Holdings:

- 1 Order that father had not abandoned child in six months prior to her birth and thus had not impliedly consented to child's adoption was **interlocutory**, for purposes of obtaining mandamus review;
- 2 Father's motion to dismiss did not toll presumptively reasonable time for father to seek mandamus review, but petition was timely as to order denying motion;
- 3 **As matter of first impression, probate court was required to dismiss petition for adoption, and it lacked jurisdiction to transfer case to juvenile court for limited purpose of determining whether to terminate father's parental rights, when it ruled that father had not consented to adoption; and**
- 4 **Probate court had jurisdiction to award temporary custody to prospective adoptive parents.**

Petition granted in part and denied in part; writ issued.

[Moore](#), J., concurred in result and filed opinion.

[Thompson](#), P.J., concurred in result in part, dissented in part, and filed opinion, in which [Donaldson](#), J., joined.

## Ex parte W.L.K.

- We are aware that this court and our supreme court have indicated that the **transfer language contained in [§ 26–10A–3](#) mandates transfer to the juvenile court of adoption proceedings lacking implied or express consent from a parent.**
- [Ex parte A.M.P., 997 So.2d at 1018](#) (“It is only when there is no express or implied consent or relinquishment from a parent of the adoptee that the mandatory transfer portion of [§ 26–10A–3](#) applies.... When applicable, this transfer provision is mandatory....”); [R.L. v. J.E.R., 69 So.3d 898, 901 \(Ala.Civ.App.2011\)](#) (“The mother refused to consent to the adoption; therefore, pursuant to [§ 26–10A–3](#), the probate court **was required to transfer** the matter to the court having jurisdiction to determine whether the mother's parental rights were due to be terminated.”).
- In *Ex parte A.M.P.*, our supreme court further opined that, “[w]hen [§ 26–10A–3](#) is read *in para materia* with [§ 26–10A–9](#), **it is clear that if the probate court finds that the evidence does not prove implied consent ..., then the probate court must transfer the case to juvenile court for a determination of whether to terminate parental rights.**” [Ex parte A.M.P., 997 So.2d at 1019.](#)

## Ex parte W.L.K.

- However, our supreme court did not consider the language of [§ 26–10A–24\(d\)](#) in its analysis in *Ex parte A.M.P.*, and neither *Ex parte A.M.P.* nor *R.L.* involved the resolution of an adoption contest in favor of the objecting parent under [§ 26–10A–24\(d\)](#).
- Thus, we are presented with a question that cannot be answered by reliance on those cases.

## Ex parte W.L.K.

### Holdings:

#### **As matter of first impression:**

- Probate court was **required to dismiss petition for adoption**
- Probate court **lacked jurisdiction to transfer case to juvenile court for limited purpose of determining whether to terminate father's parental rights, when it ruled that father had not consented to adoption.**

Petition granted in part and denied in part; writ issued.

[Moore](#), J., concurred in result and filed opinion.

[Thompson](#), P.J., concurred in result in part, dissented in part, and filed opinion, in which [Donaldson](#), J., joined.

D.B. and T.B. v. M.A.,  
975 So. 2d 927 (Ala. Civ. App. 2006).

PROCEDURE:

- These appeals arise from consolidated proceedings involving an **adoption action** and an action to register and enforce a child-custody judgment entered by a Nebraska trial court.
- These appeals are before this court after numerous proceedings in **three different courts in Alabama—a probate court, a juvenile court, and a family court—with accompanying orders from no less than five Alabama judges,**
- in addition to proceedings in a Nebraska trial court. M.A. (“the father”) is a Nebraska resident and the father of B.B., the child at issue in this action (“the child”).

## D.B. and T.B. v. M.A.,

### **FACTS:**

- Child was born in Nebraska.
- Child was moved to Alabama when he was only 11 days old.
- He clearly did not live with the adoptive couple from birth.
- Therefore, **Alabama cannot claim home-state jurisdiction under the PKPA.**
- Furthermore, under the facts of this case, **an Alabama court cannot invoke jurisdiction under any of the other provisions of [28 U.S.C. § 1738A](#).**
- Indeed, **under the PKPA, an Alabama court is bound to recognize the jurisdiction of the Nebraska trial court** in this case because the Nebraska trial court has made a custody determination regarding the child.

D.B. and T.B. v. M.A.,  
975 So. 2d 927 (Ala. Civ. App. 2006).

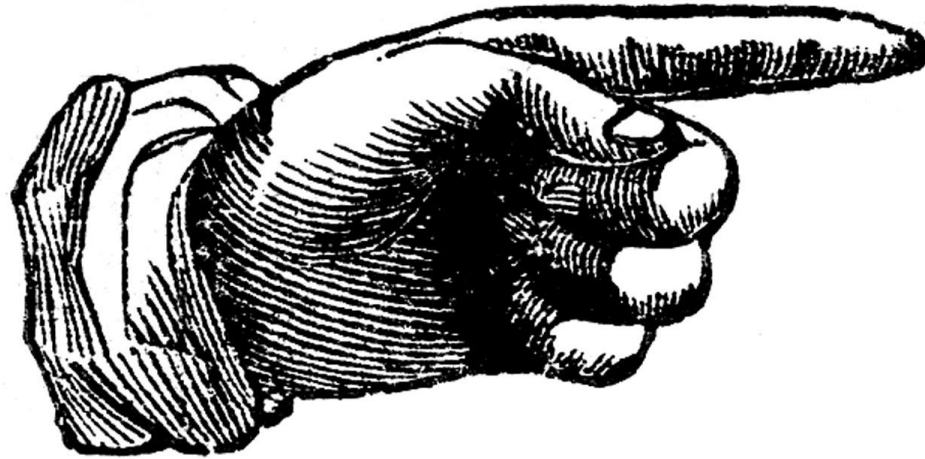
**HOLDING**

- Under the Parental Kidnapping Prevention Act (20 U.S.C. § 1738A), **Alabama lacks jurisdiction in custody proceedings pertaining to a child whose “home state” is currently exercising jurisdiction in existing custody or visitation proceedings.**
- The “home state” is one where a child has, immediately preceding the time in question, lived with an acting parent for 6 months or from birth if younger than 6 months, notwithstanding any temporary absences.
- However, a state may exercise such “home state” jurisdiction within 6 months of the child’s removal from the state if the removal was made by a custody contestant and another contestant continues to reside within the state.



NOTICE

**Please Notice This**



M.M. v. D.P.,  
10 So. 3d 605 (Ala. Civ. App. 2008).

- The probate court may not grant an adoption of a child **without a waiver of notice or consent from a father listed on the child's birth certificate.**
- Ala. Code § 26-10A-7(a)(3)(d) gives a **presumed father** an unqualified right to object to the child's adoption, **even absent his filing with the Putative Father Registry.**

A.D.S. v. S.J.L.,  
70 So.3d 345 ( Ala. Civ. App. 2010)

**HOLDING:**

- Biological father of child born out of wedlock, **who did not comply with Putative Father Registry Act**, did not hold the child out as his own, as required for him to be considered the child's **presumed father**, rather than **putative father**, under Adoption Code provisions applicable at time of his paternity action
- Therefore, **he did not enjoy an unqualified right to object to the adoption of the child**; at time adoption petition was filed in probate court,
- (Per Pittman, J., with four Judges concurring in the result.)  
[Code 1975, §§ 26–10A–7\(a\)\(3\)\(d\), \(a\)\(5\), 26–10C–1 et seq.](#)

**PRE-BIRTH:**

- Biological father had done nothing to indicate that the child was his.
- Had provided no material support or housing to the mother during the pregnancy.
- Had announced to no one in the community that the mother's fetus would be his child.
- Had taken no steps to initiate a paternity action before the child's birth.

## A.D.S. v. S.J.L.

### POST BIRTH:

- Even if he was prevented from bringing child into his home by child's mother;
- The child had not ever visited biological father's home even once, before or after the filing of the adoption petition.

# Post-Judgment Motions



C.B.W.N. v. K.P.R.,  
2018 WL 1443391(Ala. Civ. App. 2018).

**PROCEDURAL FACTS:**

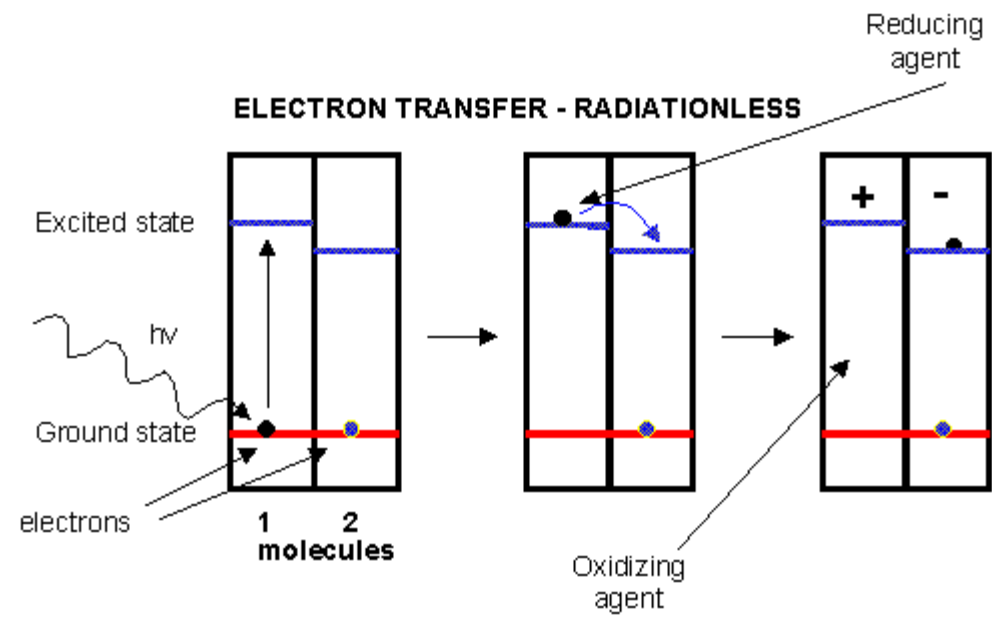
- C.B.W.N. (“the stepfather”) appeals from an order of the probate court that, among other things, **granted the contest of K.P.R. (“the father”)** to the proposed adoption of C.A.R. (“the child”) by the stepfather.
- Denied the stepfather's petition to adopt the child.
- Dismissed the adoption proceeding.

C.B.W.N. v. K.P.R.,

**HOLDING:**

- Based on the current interpretation of § 26–10A–26, Ala. Code 1975, the **appeal was required to be filed within 14 days of the entry of the order.**
- Because the appeal was filed more than 14 days after the entry of the order, this court is without jurisdiction and we dismiss the appeal. Rule 2(a)(1), Ala. R. App. P.





# TRANSFER

Ex parte A.M.P.,  
997 So. 2d 1008 (Ala. 2008).

Four different provisions address the transfer of adoption cases from probate court:

(1) Ala. Code § 12-12-35

- Upon motion by one of the parties.
- Adoption proceedings may be transferred to district court.
- At the probate **court's discretion**.
- Once transferred, **the entire" adoption proceeding** is transferred to district court.

Ex parte A.M.P.,

Four different provisions address the transfer of adoption cases from probate court:

(1) Ala. Code § 12-12-35

- [(b) When adoption proceedings are transferred to the district court, **a copy of the record of such proceedings shall be filed in the probate court**, and the probate court offices shall maintain records of all adoption proceedings within their respective counties.]

(2) **Ala. Code § 26-10A-21**

- If, it is determined that any other custody action concerning the adoptee is pending in another court
- Any party to the adoption proceeding, or the court on its own motion, may move to **stay such adoption proceeding until a determination** has been made by an appropriate court with jurisdiction pursuant to the provisions of the Uniform Child Custody Act (UCCJA) or the Parental Kidnapping Prevention Act (PKPA).
- “The adoption” may be transferred and consolidated with a custody proceeding pending in any court in this state.”

➤ **HOLDING:**

- The current version of § 26–10A–21, making transfer of the adoption proceeding and consolidation with any custody proceeding **discretionary**

(3) **Ala. Code § 26-10A-24.**

- On motion of either party or of the court.
- A contested adoption hearing may be transferred to the “court having jurisdiction over juvenile matters.” [Discretionary with court]
- Note: “**Entire adoption proceeding**” is NOT transferred. **ONLY the “CONTESTED HEARING” is transferred.**
- After juvenile court has hearing on the contest, the adoption proceeding is **remanded back to probate court for further action.**

**(4) Ala. Code § 26-10A-3**

- When a party's **consent required for an adoption is not present.**
- The case **must be transferred to juvenile court for the limited purpose** of adjudicating the termination of the party's parental rights. [NO DISCRETION]
- Following that limited determination, the case would be *remanded to the probate court.*

Ex parte A.M.P.,

- When the probate court has exercised its discretion to transfer the entire adoption proceeding (by virtue of [§ 12–12–35](#) or [§ 26–10A–21](#)) to either a district or another court, the transferee court acquires jurisdiction.
- The probate court thereafter **maintains only recordkeeping responsibilities**. See [§ 12–12–35\(b\)](#)

Ex parte A.M.P.,

- When the probate court has exercised its discretion to transfer only that limited portion of the proceeding concerning a contested hearing (by virtue of [§ 26–10A–24\(e\)](#)).
- it is then the province of the transferee juvenile court, attendant to the transferred contested hearing, to decide a contested issue of implied consent.
- Put another way, it is the court that hears and decides the contest that determines “[w]hether an actual or implied consent or relinquishment to the adoption is valid.” [§ 26–10A–24\(a\)\(3\)](#).



# VISITATION



B.C.M. v. H.E.C.,  
907 So. 2d 445 (Ala. Civ. App. 2005).

When terminating parental rights:

- a court cannot reserve visitation rights to the terminated parent.

THE END

